IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 714 (MS) OF 2006

Kishan Singh,
S/o late Sri Dungar Singh,
R/o Village Navakhera, Tehsil- Haldwani,
District- Nainital. .....Petitioner.

Versus

1. Civil Judge (Junior Division), Haldwani, District Nainital.
2. Gram Sabha, Navarkhera, Tehsil Haldwani, District Nainital, through Gram Pradhan, Sri Sunder Lal.

.....Respondents.

Dated: 14.06.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Rajeev Sharma, Advocate for the petitioner, Standing Counsel for the respondent no. 1 and Sri Divakar Chamoli, Advocate for the respondent no.2.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 31.05.2006 passed by the Additional District Judge/1st Fast Track Court Haldwani District Nainital in Civil Appeal No. 7/2006 Kishan Singh Vs. Gram Sabha Navarkhera and others and judgment dated 24.03.2006 passed by the learned Civil Judge (Junior Division) Haldwani, District Nainital in Civil Suit No. 30/2005.

Briefly stated, the petitioner has filed a suit being Suit No. 30 of 2005 on the ground that the land in question is being used for the purpose of pathway as well as for the use etc. and for the approach of his agricultural land as a path way.

Both the courts below have refused to grant injunction in favour of the petitioner.

Since both the courts below have come to the conclusion that neither any prima facie balance of convenience, irreparable injury lies with the petitioner, therefore, the injunction was refused.

In the ***Ganga Saran Vs. Civil Judge and others 1991 (1) ARC 231 (FB),*** it has been held as under:-

"*Where an aggrieved party approaches High Court under Article 226 of the Constitution against an order passed in civil suit refusing to issue injunction to a private individual Who is not under statutory duty to perform public duty or vacating an order of injunction, the main relief is for issue of a writ of mandamus to a private individual and such a writ petition under Article 226 of the Constitution would not be maintainable. Following the decision of the Supreme Court in Qamaruddin's case (Supra) this Court cannot issue a writ of mandamus to a private party unless he is under a statutory duty to perform a public duty. It is not shown to us that the respondents in these petitions are under any statutory duty and, therefore, these petitions are not maintainable.*

In view of the above, the petitioner has very fairly stated that let the suit be decided within a period of four months.

Consequently, court below/respondent no.1 is directed to decide Suit No. 30 of 2005 within a period of four months from the date of production of the certified copy of the order. However, any findings recorded by the courts below shall not come in the way, while deciding the suit on merits and the decision of the suit shall be binding between the parties. However, any construction, which has been made during the pendency of the suit shall be subject to the final result of the suit itself.

Subject to the aforesaid, writ petition is dismissed at this stage. No order as to costs.

(Rajesh Tandon, J.)

14.06.2006
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